

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

ROBERT RAY TYSOR,

Petitioner

vs.

CIVIL NO. 1:CV-09-2052

WARDEN BLEDSOE,

(Judge Caldwell)

Respondent.

MEMORANDUM

I. *Introduction*

Robert Ray Tysor, an inmate at the United States Penitentiary in Lewisburg, Pennsylvania, has filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Tysor is serving a sentence imposed by the United States District Court for the District of Wyoming. He argues the sentence is illegal as it was improperly enhanced by a prior conviction for a walkaway escape from a halfway house. He contends that while an escape conviction was previously considered a crime of violence under the Armed Career Criminal Act, 18 U.S.C. § 924(e), it no longer qualifies as such under recent Supreme Court decisions in *Chambers v. United States*, __ U.S. __, 129 S.Ct. 687, 172 L. Ed. 2d 484 (2009), and *Begay v. United States*, __ U.S. __, 128 S.Ct. 1581, 1586, 170 L. Ed. 2d 490 (2008).

We will dismiss the petition without prejudice to Petitioner's filing a motion under 28 U.S.C. § 2255 in the sentencing court.

II. *Background*

Petitioner pled guilty in the District of Wyoming to being a felon in possession of a firearm, a felon in possession of ammunition, and a fugitive from justice in possession of a firearm. *United States v. Tysor*, No. 2:99-CR-0075 (D. Wyo. Jan. 14, 2000). On April 20, 2000, he was sentenced to 240 months' imprisonment, subsequently lowered to 174 months for substantial assistance. Petitioner did not take a direct appeal nor did he file a 2255 motion.

III. *Discussion*

"A motion to vacate sentence pursuant to 28 U.S.C. § 2255 is the means to collaterally challenge a federal conviction or sentence," *Massey v. United States*, 581 F.3d 172, 174 (3d Cir. 2009), and the motion must be presented to the court that imposed the sentence. See 28 U.S.C. § 2255(a)(providing that a defendant "may move the court which imposed the sentence"). In the instant case, Petitioner is challenging the sentence imposed, and he still has the remedy of a section 2255 motion available to him. We will therefore dismiss the instant petition without prejudice to the filing of a 2255 motion in the sentencing court.

In doing so, we express no opinion on the merits of Petitioner's claim or whether he will succeed in a 2255 motion.¹ We also express no opinion on the success

¹ We do note that when the same claim involving a walkaway escape was brought on a direct appeal, the Tenth Circuit remanded for the sentencing court to consider the claim in light of (continued...)

of any subsequent 2241 petition he may file if he is unsuccessful on his 2255 motion.

See, e.g., *In re Dorsainvil*, 119 F.3d 245 (3d Cir. 1997).

We will issue an appropriate order.

/s/William W. Caldwell

William W. Caldwell

United States District Judge

Date: November 10, 2009

¹(...continued)
Chambers. See *United States v. Charles*, 576 F.3d 1060, 1969 (10th Cir. 2009).

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O R D E R

AND NOW, this 10th day of November, 2009, it is ordered that:

1. The Petition for Writ of Habeas Corpus (doc. 1) is dismissed without prejudice to filing a section 2255 motion in the sentencing court.
2. The Clerk of Court is directed to close this case.

/s/William W. Caldwell

William W. Caldwell

United States District Judge